IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 20244 of 2007(I)

PETITIONER:

PRADEEP.K.G., S/O.M.M.GILBERT,
KALLUZHATHIL HOUSE, PARAKODE P.O., ADOOR.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS:

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1. ADOOR MUNICIPALITY, ADOOR,
PATHANAMTHITTA DISTRICT, REPRESENTED BY ITS SECRETARY.

2. THE CIRCLE INSPECTOR OF POLICE, ADOOR,
PATHANAMTHITTA DISTRICT.

3. SUB INSPECTOR OF POLICE, ADOOR.

4. SALU GEORGE, KULAPPURATHU VEEDU,
PARAKODE P.O., PATHANAMTHITTA DISTRICT.

BY ADV. SRI.VARGHESE P.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 202442007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE COPY OF RECEIPT NO.1122 M.E.(1947)

EXT. P1 (a) : TRUE COPY OF RECEIPT NO.1123 M.E. (1948)

EXT. P1 (b) : TRUE COPY OF RECEIPT NO.1124 M.E. (1949)

EXT. P2 TRUE COPY OF THE NOTICE DATED 24.2.1950.

EXT. P3 : TRUE COPY OF THE ORDER PASSED BY THE TAHSILDAR DURING APRIL, 1950.

EXT. P4 : TRUE COPY OF RECEIPT DT. 25.7.1952.

EXT. P4 (a) : TRUE COPY OF THE RECEIPT DATED 21.5.1953.

EXT. P5 : TRUE COPY OF SETTLEMENT DEED DATED 4.2.2000.

EXT. P6 : TRUE COPY OF THE NOTICE DATED 29.6.2007.

K.M.JOSEPH, J.

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WP.(C) No. 20244 of 2007

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Dated this the 6th day of August, 2007

JUDGMENT

Petitioner challenges Ext.P6 notice and seeks a declaration that the action of the first respondent is illegal and without jurisdiction. Ext.P6 is stated to be a notice issued by the Secretary directing the petitioner to vacate the property, which the petitioner has encroached upon, otherwise action under Section 376(3)(a) of the Municipality Act is threatened.

2. Case of the petitioner in brief is as follows:

The petitioner is in absolute enjoyment of the land. There is a very old building. Petitioner is conducting retail sales outlet of Shanthigiri Sidha Vydyasala in Door No.260 and in Door No.261 a bakery is functioning. Petitioner's grandfather was granted the leasehold right over the property for unlimited period as early as in the year 1950 by Ext.P3 issued by the Tahsildar, Kunnathur and after his death in 1982 the property came into the possession of the father and father's brother. In the year 2000 father and father's brother of the

petitioner executed Ext.P5 settlement deed in favour of the petitioner. One of the contentions is that no opportunity was given to the petitioner before passing Ext.P6. Petitioner's case is that the property is not vested with the Municipality.

3. In the counter affidavit it is stated that the property is vested in the Municipality. It is further stated that the alleged building and property is part of land having 9 acres and 30 cents, which originally belonged to the Adoor Panchayat, and upon formation of the Adoor Municipality the property automatically vests with the Municipality. The respondent has disputed the genuineness of Exts.P1 to P4. It is stated that the original documents are to be scrutinised. It is stated that the petitioner did not produce any tax receipt evidencing payment of tax. It is also stated that there is no record to show that mutation is effected in his name. It is further stated that kuthakapattam as alleged by the petitioner is neither heritable nor assignable as per law and hence all documents are not binding on the Municipality.

4. I heard learned counsel for the parties.

5. Before issuing Ext.P6 there was no hearing or notice issued to

the petitioner. There is a case for the respondent that Exts.P1 to P4 are not genuine. The respondent has a case that genuineness of Exts.P1 to P6 are to be doubted and originals of the documents are to be scrutinised.

6. Having regard to the facts, I feel that that an opportunity should be given to the petitioner to produce all the documents, which he relies on and he should be heard.

In such circumstances, treating Ext.P6 as a notice, the petitioner may file whatever objection he has to Ext.P6 within a period of ten days from today. Thereafter he may produce and rely on such documents which he feels necessary to prove his case. The Council will afford an opportunity of hearing also to the petitioner and take a decision in the matter in accordance with law. A decision will be taken in the matter within a period of six weeks from the date of receipt of a copy of this judgment. Till such time as a decision is taken, the interim order passed by this court will continue.

The writ petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

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